

Pursuant to 18 U.S.C. § 3582(c), this Court “may not modify a term of imprisonment once it has been imposed” unless one of three situations is presented. First, the Court may reduce a term of imprisonment where the Director of the Bureau of Prisons brings an appropriate motion. 18 U.S.C. § 3582(c)(1)(A). The Court has no such motion before it.

Second, the Court may modify a term of imprisonment if such modification is expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure. 18 U.S.C. § 3582(c)(1)(B). Federal courts have noted that the only statutes that would expressly permit modification of an imposed sentence are 18 U.S.C. § 2255 (collateral attack on sentence) and 18 U.S.C. § 2106 (remand from a Court of Appeals or the Supreme Court). See United States v. Ross, 245 F.3d 577, 586 (6th Cir. 2001) (“Only two other statutory exceptions modify the general rule expressed in 18 U.S.C. § 3582 that a district court may not modify a term of imprisonment once the same has been imposed. Upon the issuance of relief under 28 U.S.C. § 2255, a resentencing may occur. Similarly, under 28 U.S.C. § 2106, upon remand from a Court of Appeals or the Supreme Court to the district court, a resentencing is authorized by law.”); United States v. Garcia, No. 04-cr-29-7, 2005 WL 1250216, *2 (S.D.N.Y. May 26, 2005) (same); see also United States v. Diaz-Clark, 292 F.3d 1310, 1315 (11th Cir. 2002). Judge Lifland previously considered and dismissed Petitioner’s § 2255 motion as untimely. Because this matter is not before the Court on remand from the Third Circuit or the Supreme Court, 18 U.S.C. § 2106 is inapplicable. Finally, a modification of Petitioner’s sentence is not expressly permitted by Rule 35 because the deadline for sentence correction under Rule 35(a) has passed, and Rule 35(b) permits sentence correction only upon government motion.

Third, where a defendant has been sentenced based upon a sentencing range that was subsequently lowered by the Sentencing Commission, the Court may reduce the sentence.

18 U.S.C. § 3582(c)(2). Castrillon does not seek a reduction based on any change in the Sentencing Guidelines.

Accordingly, this Court has no jurisdiction to entertain Castrillon's motion to reduce his sentence.

ORDER

ACCORDINGLY IT IS on this 8th day of April, 2008,

ORDERED that because this Court lacks jurisdiction to modify Petitioner's sentence, Petitioner's motion to reduce his sentence (DKT#103) is **DENIED**; and it is further

ORDERED that the government's opposition papers, filed as a motion to dismiss Petitioner's motion (DKT#105), is **DENIED** as moot; and it is further

ORDERED that this case is **CLOSED**.

/s/ Faith S. Hochberg
HON. FAITH S. HOCHBERG, U.S.D.J